GENERAL

RULES AND FORMS,

AS

FRAMED AND APPROVED

PURSUANT TO THE PROVISIONS OF THE TENTH SECTION OF "THE UPPER CANADA DIVISION COURTS' EXTENSION ACT OF 1853,"

(16*th Vic.*, *Ch.* 177, *Sec.* 10,)

FOR AND CONCERNING

THE PRACTICE AND PROCEEDINGS

OF

DIVISION COURTS

IN

UPPER CANADA.

TORONTO, U. C., 1854.

PRINTED AT THE "LEADER" STEAM PRESS, KING STREET EAST.

1852
(17)

WHEREAS by "The Upper Canada Division Courts Extension Act of 1853," it was enacted, That it should be lawful for the Governor General of this Province to appoint and authorize five of the Judges of the County Courts, in Upper Canada, to frame such General Rules, as to them should seem expedient, for and concerning the practice and proceedings of the Courts holden under the authority of "The Upper Canada Division Courts Act of 1850," and for the execution of the process of such Courts, and in relation to any of the provisions of the said last mentioned Act, or of "The Upper Canada Division Courts Extension Act of 1853," or of any Act to be thereafter passed, as to which there might have arisen doubts, or might have been conflicting decisions in the said Divisions Courts, or as to which there might thereafter arise doubts; and also to frame forms for every proceeding, for which they should think it necessary that a form should be provided: and that all such rules, orders and forms, as aforesaid, shonld be certified to the Chief Justice of Upper Canada, under the hands of the County Judges so appointed and authorized, or of any three of them; and should be, by the said Chief Justice, submitted to the Judges of the Superior Courts of Common Law at Toronto, or any four of them; and that such Judges of the Superior Courts (of whom the said Chief Justice, or the Chief Justice of the Court of Common Pleas at Toronto should be one) might approve or disallow, or alter or amend such rules or orders; and such of the rules as should be so approved by such Judges of the Superior Courts, should have the same force and effect, as if the same had been made and included in "The Upper Canada Division Courts Extension Act of 1853."

AND WHEREAS by virtue and in exercise of the power for that purpose given to the Governor of this Province by the said recited Act, "The Upper Canada Division Courts Extension Act of 1853,"

The Honorable Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch, and James Robert Gowan (five of the Judges of the County Courts in Upper Canada), were on the twenty-fifth day of November in the year of our Lord one thousand eight hundred and fifty-three, appointed by His Excellency the Administrator of the Government of this Province, to frame such general Rules and Orders, as to them should seem expedient, for and concerning the practice and proceedings of the Courts holden under the authority of the said Upper Canada Divisions Courts Act of 1850, and for the execution of the process of such Courts, and in relation to any of the provisions of the said Act of 1850, or of the above in part recited Act, as to which there might have arisen doubts, or might have been conflicting decisions in the said Division Courts, or as to which there might thereafter arise doubts, and also to frame Forms for every proceeding, for which they should think it necessary that a Form should be provided.

In Pursuance of the powers thereby vested in us, We the said Samuel Bealey Harrison, Miles O'Reilly, Edward Clarke Campbell, George Malloch, and James Robert Gowan, have framed the following Rules, Orders, and Forms, and we do hereby certify the same to the Chief Justice of Upper Canada accordingly.

(Signed,) S. B. HARRISON,
M. O'REILLY,
E. C. CAMPBELL,
GEO. MALLOCH,
JAS. ROBT. GOWAN.

Toronto, 28th June, 1854.

TIME OF OPERATION.

1. All rules of Practice and Forms, now in force in the several Counties, respectively, in Upper Canada, shall, from and after the Rules and Forms hereinafter set forth come into operation, cease to be used in the several Division Courts of Upper Canada; and, in lieu thereof, the following shall be the Rules of Practice and Forms adopted and used in the said Courts: and with reference to Forms, not contained in the Schedule to these Rules appended, where practicable, the Forms prescribed in the said schedule shall be used as guides in framing the same, until Forms shall be provided by the Commission under the authority aforesaid.

2. It is ordered, that the following Rules and Forms shall come into operation, and be in force, upon, from, and after the first day of October, 1854.

CLERK'S DUTIES.

3. The Clerk of every Division Court shall have an office at such place, within the Division for which he is Clerk, as the Judge shall direct.

4. Two books (besides the account kept for the Fee Fund) shall be kept by each Clerk, and the necessary entries be fairly made therein, namely, a book to be called "the Procedure Book," in which shall be entered a note of all Summonses issued, and of all Orders, Judgments, Decrees, Warrants, Executions, and Returns thereto, and of all other proceedings in every cause, and at every Court; and a book to be called the "Cash Book," in which shall be entered an account of all Suitors' Moneys paid into and out of Court; which books shall be according to the Forms given in the Schedule to these Rules appended, and kept, as nearly as may be, in the manner shown in the Forms.

See No. 64 of Schedule.

See No. 65 of Schedule.

5. The Returns, required to be made by Clerks under the 110th Section of the "Upper Canada Division Courts Act of 1850," shall be according to the Form

See No. 66 of Schedule.

given in the Schedule, and shall be made immediately after the 30th day of June, and 31st day of December, in each year, without any special order from the Judge.

See No. 67 of Schedule.

6. The List of unclaimed moneys, required by the 13th Section of "The Upper Canada Division Courts Extension Act of 1853," shall be according to the Form given in the Schedule; and a copy thereof shall, in the month of January in each year, be transmitted by the Clerk, together with the moneys therein mentioned, to the Treasurer of the County.

7. The Returns mentioned in the twelfth Rule, shall be filed by the Clerk in his office, and shall be open, without fee, to the inspection of any person interested, desirous of searching the same; and it shall be the duty of the Clerk to examine such Returns, and if found correct and complete, within ten days after the receipt thereof, to endorse thereon a Memorandum in the following words: "I have carefully examined the within "Return, and find the same to be full, true, and correct, "in every particular, to the best of my knowledge and "belief. Dated the day of 18 A. B., Clerk." And if such Returns be found by the Clerk to be incorrect or incomplete, he shall forthwith notify the Judge of the same, and of the particulars thereof.

See No. 68 of Schedule.

8. The Clerk shall number every demand, claim, or account, in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the Court for the then current year.

See No. 6 of Schedule, also Rule No. 18.

9. The Clerk shall annex to every summons (whether original, alias, or pluries) the copy of account, demand, or claim, entered with him according to the fourteenth Rule; and to each copy of summons to be served, shall be likewise annexed a copy of such account, demand, or claim; and the clerk shall, without delay, issue the same for service.

See Nos. 56, 57 & 62 of Schedule.

10. Upon all Warrants of Commitment, the Clerk of the Court, issuing the same, shall indorse, and show

the amount of Debt and Costs, in gross, on each proceeding, or of Fine and Costs, up to the time of delivery to the Bailiff for execution.

BAILIFF'S DUTIES.

11. Four days before the holding any Court, the Bailiff of that Court shall deliver to the Clerk a Return of each summons issued or delivered to him, returnable at such Court, and such Return shall state the mode of service; and if a summons has not been served, the reason of such non-service shall be stated, in writing, on the back thereof.

12. Every Bailiff, levying and receiving any money by virtue of any process, shall, within three days after the receipt thereof, pay over or transmit the same to the proper officer; and at every Court, and at such other times as the Judge shall require, the Bailiff shall deliver to the Clerk of the Court, a Statement, or Return on oath, pursuant to the Form in the Schedule, of what shall have been done since his last Return, under every Warrant, Precept, and Writ of Execution, which he shall have been required to execute.

See Rule No 7

See No. 68 of Schedule.

13. The Bailiff, or other officer, executing any Warrant of Commitment, shall, at the time of delivering the party arrested with the warrant to the Jailer, indorse the number of miles, showing the amount of mileage, and also state, in writing, the actual day of the arrest

DESCRIPTION OF PARTIES.

14. Every account, demand, or claim, should show the names in full, and the present or last known places of abode of the parties, and must be written in a legible manner, and delivered to the Clerk, at his office; provided that if the plaintiff is unacquainted with the defendant's christian name, the defendant may be described by his surname, or by his surname and the initial of his christian name, or by such name as he is

See No. 6 of Schedule.

generally known by: and the defendant may be so described in the summons, and the same may be taken to be as valid, as if the true christian name and surname had been stated in the summons; and all subsequent proceedings thereon may be taken in conformity with such description; or, when the defendant's true name is discovered, the proceedings may be amended accordingly, on such terms as the Judge may think fit and direct.

See amendments, commencing with Rule No. 33.

PARTICULARS OF CLAIM.

15. The account, demand, or claim shall, in every case admitting thereof, show the particulars in detail; and, in other cases, shall contain a statement of the particulars of the demand or claim, or the facts constituting the cause of action, in ordinary and concise language, and the sum or sums of money claimed in respect thereto: (The Forms in the Schedule are given by way of illustration) Provided always, that, in all cases, the Judge, in his discretion, and on such terms as he may think fit, may adjourn the hearing of the cause, for a statement of particulars or further particulars.

See Nos. 3 & 4 of Schedule

16. In all actions in Division Courts against officers and their sureties, (under the 22nd Section of "The Upper Canada Division Courts Act of 1850") on the officer's *Security Covenant*, the particulars of the demand or claim, shall be according to the Form in the Schedule. The summons and subsequent proceedings to be the same as in ordinary cases.

See No. 5 of Schedule.

PARTICULARS ON JUDGMENT SUMMONS.

17. Where a party, having an unsatisfied judgment, desires to proceed under the 91st section of "The Upper Canada Division Courts Act of 1850," he shall enter with the Clerk a minute in writing according to the Form in the Schedule, or to the like effect, which shall be numbered in the order in which it shall be received; and, if he proceeds in a Division Court, other than the

See No. 54 of Schedule.

one in which the judgment was entered, he shall, with the minute, deliver to the Clerk a certified copy of the judgment: and thereupon a summons, bearing the number of the minute, shall issue, which summons shall be according to the Form in the Schedule, or to the like effect. See No. 55 of Schedule.

SUMMONS.

18. The ordinary summons on demand, account, or claim, shall be issued according to the Form to these Rules appended, in lieu of the Form given in the Schedule to "The Upper Canada Division Courts Act of 1850;" and the issuing thereof shall be the commencement of the suit: and every summons shall be numbered to correspond with the demand or claim, on which it issues, and dated as of the day on which the same was entered for suit, except in the case of *alias* or *pluries* summons, which shall be dated on the day on which it actually issues. See No. 6 of Schedule.

19. Where the plaintiff sues under the 90th section of "The Upper Canada Division Courts Act of 1850," the proceeding shall be the same as in ordinary cases; but, in addition to the usual notice on the original summons to appear, there shall be added the following: "The defendant is informed and cautioned, that A. B. "(*the beneficial plaintiff*) only has power to discharge "this suit, the subject matter of this suit having been "seized under execution."

20. Leave to issue a summons under the 9th section of "The Upper Canada Division Courts Extension Act of 1853" may be granted at any time by the Judge, on production of an affidavit in the Form, or to the effect of the Forms given in the Schedule; or upon oath to the same effect, at any sittings of the Court, in which the action is to be brought; and where a summons issues by leave of the Judge, no written order for such leave shall be necessary, but it shall be sufficient to See No. 1 & 2 of Schedule.

insert in the summons "Issued by leave of the Judge."

SERVICE OF SUMMONS.

21. Where summons, or other process, is required to be served out of the division of the Court from which the same issues, the papers may be transmitted, by mail, by the Clerk issuing the same, (on receiving the necessary postage and fees) to the Clerk of the division where the same is required to be served; and such last mentioned Clerk shall forthwith deliver such summons, or other process, to the Bailiff of his division, to be executed; and such Bailiff shall serve the same, and forthwith make return thereof to the Clerk of his Court, in the manner required by the eleventh rule, and such last mentioned Clerk, on return made, shall forthwith transmit the papers, by mail, with the necessary affidavits of service, if effected, to the first mentioned Clerk.

22. Every summons on account, demand, or claim, must be served ten days before the holding of the Court at which it is returnable, (neither the day of service, nor the day of holding the Court, to be counted) except when otherwise directed by the Upper Canada Division Courts Acts; and where any summons has not been served, another summons, or successive summonses may be issued.

See Nos. 54 & 55 of Schedule.

23. The summons under the 91st section of "The Upper Canada Division Courts Act of 1850" may be served by delivering to the defendant a copy thereof, and showing the original, if required: and shall be served ten days at least before the day on which the party is required to appear: provided always, that the service of such summons, at any time before the day appointed for the appearance of such party, may be deemed by the Judge to be a good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the Court.

ATTACHMENT.

See No. 22 of Schedule.

24. The Form of affidavit for an Attachment shall be according to the Form in the schedule, in lieu of the

Form given in "The Upper Canada Division Courts Act of 1850," schedule D.

25. In all cases where an Attachment shall issue, (whether the suit be commenced by attachment in the first instance or not) and the summons against the defendant shall not be personally served, the hearing or trial shall not take place until a month after the seizure under the Attachment.

For Form of attachment, see 18 and 14 Vic. ch. 53, Schedule E.

INSPECTION OF DOCUMENTS.

26. When in any action, the defendant is desirous of inspecting any deed, bond, or other instrument under seal, or any written contract, or other instrument in which he has an interest, and which shall be in the possession, power, or control of the plaintiff, he may, within four days from the day of the service of the summons, give notice, by pre-paid post letter or otherwise, that he desires to inspect such instrument, at any place to be appointed by the plaintiff, within the division in which the suit is brought; and the plaintiff shall appoint a place accordingly; and if the plaintiff shall neglect, or refuse to appoint such place, or to allow the defendant or his agent to inspect it within three days from the day of receiving such notice, the Judge may, in his discretion, on the day of hearing, adjourn the cause, for the purpose of such inspection, and make such order as to costs, as he shall think fit.

WITHDRAWAL BY PLAINTIFF.

27. If the plaintiff be desirous of not proceeding in the cause, he shall serve a notice thereof on the defendant, in the manner directed in "The Upper Canada Division Courts Act of 1850," for the service of a notice of set-off; and, after receipt of such notice, the defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the Judge shall otherwise order: and where a cause is not withdrawn until after the opening of the Court, the

See 18 and 14 Vic. ch. 53, sec 43

hearing fee shall be charged, unless otherwise ordered.

ADJOURNMENT OF SUIT.

28. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the Judge; and where the adjournment is opposed by either party, a hearing fee, as for a defended cause, shall be charged, and the usual costs of the day, in the discretion of the Judge.

NOTICE OF DEFENCE.

29. Where the defendant is desirous to avail himself of the Law of Set-off, the Statute of Limitations, or any other defence requiring notice to the plaintiff, under the 43rd section of "The Upper Canada Division Courts Act of 1850," the Forms of Notice in the schedule may be used, to be served in the manner directed by the Act.

See Nos. 8 and 9 of Schedule.

30. With a view to save unnecessary expense in proof, the defendant (or plaintiff) shall be at liberty to give the opposite party a notice in writing, that he will admit, on the trial of the cause, any part of the claim or set-off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense, incurred for the purpose of such proof: the notice to be according to the Form in the Schedule, or to the like effect, and served on the plaintiff or defendant, or left at his usual place of abode, at least six days before the trial or hearing.

See No. 10 of Schedule.

CONFESSION.

31. Every confession or acknowledgment of debt, taken before suit commenced, must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim or demand, for which it is given, with the same fulness and certainty

as would be required, if such claim or demand were sued on in the ordinary manner; and unless application for judgment on such confession or acknowledgment shall be made to the Judge, within three calendar months next after the same is taken, or at the sittings of the Court next after the expiration of such period, no execution shall be issued on the judgment rendered, without an affidavit by the plaintiff or his agent, that the sum confessed, or some and what part thereof, remains justly due; and applications for judgment shall be made at a Court holden for the division, wherein the confession or acknowledgment was taken.

PAYMENT INTO COURT.

32. When the plaintiff shall, in accordance with the 46th section of the "Upper Canada Division Courts Act of 1850," signify to the Clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the payment into Court, but after the rising of the Court at which the summons was returnable, the case shall be tried at the then next sittings of the Court, and be put upon the list for that Court in the regular order.

AMENDMENT.

33. Where a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned on such terms as the judge shall think fit; and the costs of the person originally named as defendant, shall be in the discretion of the Judge.

34. Where a party sues, or is sued, in a representa-

tive character, but at the hearing, it appears, that he ought to have sued or been sued in his own right, the Judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

35. Where a party sues, or is sued in his own right, and it appears at the hearing, that he should have sued, or been sued, in a representative character, the Judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly; and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the summons.

36. Where the name, or description of a *plaintiff* in the summons, is insufficient or incorrect, it may at the hearing be amended, at the instance of either party, by order of the Judge, on such terms as he shall think fit: and the cause may then proceed, as to set-off and other matters, as if the name and description had been originally such as it appears, after the amendment has been made.

37. Where the name or description of a *defendant* in the summons, is insufficient or incorrect, and the defendant appears and objects to the description, it may be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the name or description had been originally such as it appears, after the amendment has been made: but if no such objection is taken, the cause may proceed, and in the judgment and all subsequent proceedings founded thereon, the defendant shall be described in the same manner.

38. In actions by or against a husband, if the wife is improperly joined or omitted as a party, the summons, may, at the hearing, be amended at the instance of either party, by order of the Judge, on such terms as he shall think fit; and the cause may proceed as to set-off and other matters, as if the proper person had been made party to the suit.

39. Where it appears at the hearing, that a *greater number* of persons have been made plaintiffs, than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause may proceed as to set-off, and other matters, as if the proper party or parties only had been made plaintiffs.

40. Where it appears at the hearing, that a *less number* of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added by order of the Judge, on such terms as he shall think fit; and the cause shall proceed as to set-off and other matters, and judgment shall be pronounced, as if the proper persons had been originally made parties; and unless the person, whose name is so added, shall assent thereto, either at the hearing or some adjournment thereof, personally, or by writing signed by him or his agent, proceedings on the judgment shall be stayed, until the Court next after five clear days from the day of hearing; and if the person, whose name is added, shall at the hearing or an adjournment thereof, consent to become a plaintiff, (such consent being in writing signed by him or his agent) execution shall issue as the Judge shall think fit; but if such party shall not consent to become a plaintiff in manner aforesaid, either at the hearing or at an adjournment thereof, judgment of non-suit may be entered.

41. When it appears at the hearing, that more persons have been made defendants, than by law required, the name of the party improperly joined may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall proceed, as to set-off and other matters, as if the party or parties liable had been sued, and judgment shall be given for the party improperly joined.

42. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall then proceed, in all respects, as to set-off and other matters, as if all the defendants had been served.

43. Where, at the hearing, a variance appears between the evidence and the matters stated in any of the proceedings in the Division Court, such proceedings may, at the discretion of the Judge, and on such terms as he shall think fit, be amended.

44. In cases of amendment, a corresponding amendment shall be made, in the presence of the Judge, in the proceedings of the Court, antecedent to such amendment; and the subsequent proceedings shall be in conformity therewith: and all amendments shall be made in open Court, and during the sitting of the Court.

45. The Judge may, in any case, refuse to set aside, or to hold void, any of the proceedings, on account of any irregularity or defect therein, which shall not, in his opinion, be such as to interfere with the just trial and adjudication of the case upon the merits.

AFFIDAVITS.

46. Every affidavit, in any proceeding in the Court, must be entitled in the cause, (if a cause has been

commenced) stating the christian and surname of the parties as in the summons, and also that of the deponent, and his place of abode and addition; and if an affidavit be sworn by an illiterate person, the jurat must contain a certificate of the Clerk or Commissioner administering the oath, that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand it; and there shall be no erasure nor interlineation in any jurat: but the Judge shall not be bound to reject, as insufficient, any affidavit not complying with the above requisites, or any of them, but may, in his discretion, receive the same.

POSTAGE.

47. Postage necessary for the transmission of any process, order, notice, or other matter, by the Clerk or Judge, shall be paid, in the first instance, by the party on whose behalf the proceeding is required, and shall be costs in the cause.

WITNESS FEES.

48. On application made to him in that behalf, the Judge shall determine, what number of witnesses shall be allowed on taxation of costs; the allowance for whose attendance shall be according to the scale in the Schedule, unless otherwise ordered; but in no case to exceed such scale, except the witness attends under *subpœna* from the Superior Courts; and, before allowing disbursements to witnesses, the Clerk shall be satisfied that the witnesses attended, and that the claim for fees is just. See No. 14, of Schedule.

ABATEMENT.

49. Where one or more of several plaintiffs or defendants shall die before judgment, the suit shall not abate, if the cause of action survive to, or against such parties,

50. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings thereon may

be taken by the survivors or survivor, without leave of the Court.

JUDGMENT.

See Nos. 16, 17, 18, 27, 31, 33, 34, 35, 36, 37, 38, 39, 40, 44, 47, 48, 59, 60, 61 and 64 of Schedule.

51. Every judgment, order, and decree of the Court, shall be entered by the Clerk in the Procedure Book, according to the Forms given in the Schedule, or to the like effect; and when any order is made for the payment of any debt, damages, costs, or other sum of money, the same shall be payable at the office of the Clerk of the Court forthwith, or at such periods as the Court shall order.

NEW TRIAL.

See No. 19 of Schedule.

52. Application for new Trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, (which grounds, if matters of fact requiring proof shall be supported by affidavit,) and a copy thereof, and of every such affidavit, shall be served by the party making the application, on the opposite party or his agent, or left at his usual place of abode or business, if within the division,—or if without the division, then with the Clerk, who shall transmit the same forthwith to the opposite party; and the application and affidavits, (if any) together with an affidavit of the service thereof, shall be delivered to the Clerk, within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, transmitted to the Judge, with a copy of the original claim, and other papers necessary to the proper understanding of the case, which delivery to the Clerk shall operate as a stay of proceedings, until the Judge's final decision on the application is communicated to the Clerk; and the Judge after receiving such papers, shall delay for six days deciding upon the application, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in

his affidavit are disputed; and the decision or judgment of the Judge shall be transmitted to the Clerk by mail, who shall, if a new trial be ordered, notify the parties thereof by mail or otherwise, and the suit shall be tried at the next sittings of the Court, unless the Judge shall otherwise order; and if the application be refused, or if the party applying shall fail to comply with the terms imposed by the Judge, the proceedings in the suit shall be continued, as if no such application had been made; provided always, that the Judge, instead of deciding upon the application after the end of the six days aforesaid, may, in his discretion, decide to hear the parties on the matter of such application, at the next sittings of the court, or at such other time and place as he may appoint, which decision shall be sent to the Clerk, and be by him communicated to the parties in like manner as aforesaid.

INTERPLEADER.

53. When any claim shall be made to, or in respect to, any goods or chattels, property, or security, taken in execution, or attached under the process of any division court, or the proceeds or value thereof, by any landlord for rent, or by any person, not being the party against whom such process has issued, and summonses have been issued on the application of the officer, charged with the execution of such process, such summonses shall be served in such time and manner, as by "The Upper Canada Division Courts Act of 1850" is directed for service of an original summons to appear; and the claimant shall be deemed the plaintiff, and the execution creditor the defendant: and the claimant shall, five clear days before the day on which the summonses are returnable, leave at the office of the Clerk of the Court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or,

in case of a claim for rent, the amount thereof, for what period, in respect to what premises the same is claimed to be due, and the terms of holding: and any money paid into court shall be retained by the Clerk, until the claim shall be adjudicated upon; provided, that, by consent, an interpleader claim may be tried, although the above rule may not have been complied with: and the summonses, the particulars, and the order thereon, shall be according to the Forms in the Schedule, or to the like effect.

See Nos. 28, 29, 30, 31 and 32 of Schedule.

54. Where the claim to any goods or chattels, property or security, taken in execution or attached, or the proceeds or value thereof, shall be dismissed, the costs of the Bailiff shall be retained by him out of the amount levied, unless the Judge shall otherwise order.

WARRANT OF COMMITMENT.

See Nos. 56, 57 and 62 of Schedule.

55. Warrants for commitment, whenever issued, shall bear date on the day on which the *order* for commitment was entered in the Procedure book, and shall continue in force for three calendar months from such date, and no longer; but no *order* for commitment shall be drawn up or served.

PROCEEDINGS AGAINST EXECUTORS AND ADMINISTRATORS.

See Nos. 42 and 43 of Schedule.

56. A party suing an executor or administrator, may charge in the summons, in the Form in the Schedule, that the defendant has assets, and has wasted them.

See No. 34 of Schedule.

57. In all cases, if the Court shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt or damages, and costs shall be levied *de bonis testatoris si &c.*, *et, si non, de bonis propriis*; and the non-payment of the amount of the demand immediately, on the Court finding such demand to be

correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount, with which he is so chargeable.

58. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the court is in favor of the plaintiff, it shall be, that the amount found to be due, and costs, shall be levied *de bonis testatoris si &c., et, si non, de bonis propriis.* See No. 35 of Schedule.

59. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied *de bonis testatoris si &c., et, si non*, as to costs, *de bonis propriis.* See No. 33 of Schedule.

60. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand *de bonis testatoris si &c., et, si non, de bonis propriis ;* and as to the whole or residue of the demand, judgment of assets *quando acciderint ;* and the plaintiff shall pay the defendant's costs of proving the administration of assets. See No. 37 of Schedule.

61. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris si &c., et, si non* as to the costs, *de bonis propriis ;* and as to the residue See No. 38 of Schedule.

of the demand, if any, judgment of assets, *quando acciderent.*

62. Where the defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets, *quando acciderint*, and the plaintiff shall pay the defendant's costs of proving the administration of assets.

See No. 39 of Schedule.

63. Where a defendant admits his representative character, and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, *de bonis testatoris si &c., et, si non*, as to the costs, *de bonis propriis;* and as to the residue of the demand, if any, judgment of assets, *quando acciderint.*

See No. 40 of Schedule.

64. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, *quando acciderint*, the plaintiff, or his personal representative, may issue a summons in the Form in the Schedule; and if it shall appear, that assets have come to the hands of the executor or administrator since the judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris si &c., et, si non*, as to the costs, *de bonis propriis:* provided, that it shall be competent for the party applying, to charge in the summons, that the executor or administrator has wasted the assets of the Testator or Intestate, in the same manner as in Rule 56; and the provisions of Rule 57 shall apply to such enquiry: and the Court may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs, *de bonis testatoris si &c., et, si non, de bonis propriis.*

See No. 41 of Schedule.

See No. 44 of Schedule.

65. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court, in other cases.

66. In actions against executors and administrators, for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff, as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris si &c., et, si non, de bonis propriis.*

REVIVING JUDGMENTS.

67. No Warrant of Execution, nor Summons for Commitment shall, without leave of the Judge, issue on a judgment more than a year old, unless an instalment has been paid on such judgment, or a Warrant of Execution against the goods, or a Warrant of Commitment, has been issued within a year from the time of obtaining such judgment; but no notice to the defendant, previous to applying for such leave, shall be necessary.

68. The mode of reviving a judgment, under the 73rd section of "The Upper Canada Division Courts Act of 1850," shall be by summons on the judgment, in the nature of a *sci: fa:* the proceedings on which shall be the same as in ordinary cases. See Nos. 45, 46, 47, 48, 50 and 51 of Schedule!

GENERAL RULE.

69. Where the excess is abandoned, it must be done, in the first instance, on the claim or set-off.

Claims by husband, in their own right may be joined with claims, in respect to which the wife must be joined as a party.

Where the Court gives leave to take any proceed-

ing, such leave shall be minuted in the Procedure Book, but it shall not be necessary to draw up any order.

In cases where the hearing is by Jury, the Judge has the same power to non-suit, as in ordinary cases.

Under the 9th section of "The Upper Canada Division Courts Extension Act of 1853,," the leave to be granted for issuing a summons shall be by the Judge, before whom the action is to be tried under the order; but no leave shall be given to bring a suit in a Division, other than one adjacent to the Division, in which the party to be sued resides; but the Division may be in the same, or an adjoining County.

See Nos. 25 and 26 of Schedule

After an award is made and filed, (with an affidavit of the due execution thereof) under the 4th section of "The Upper Canada Extension Act of 1853," the duty of the Clerk is, forthwith to enter the judgment on such award, and issue execution thereon, at the request of the party entitled to such execution, without any order from the Judge.

The Court has no jurisdiction to try an action upon a note of hand, whether brought by the payee, or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a Tavern or Ale-house.

INTERPRETATION.

70. In construing these Rules and Forms, the word "person" or "party" shall be understood to mean a body Politic or Corporate, as well as an individual; and the word "executor" or "executrix" or both, (when used) shall be held to embrace and mean "of the last will and testament," and extend to parties acting as such of their own wrong; and the word

"administrator" or "administratrix" or both (when used) shall be held to embrace and express "of the goods and chattels, rights and credits, which were, &c."; and every word importing the singular number shall, where necessary to give full effect to the Rules and Forms herein, be understood to mean several persons or things, as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female, as well as a male; and the words "on oath" shall be understood to mean *vivâ voce*, or by affidavit, or affirmation; and the words "Judge" and "Clerk", respectively, when used, shall be taken to extend and be applied to the Deputy Judge or Deputy Clerk (as the case may be or require); and the words "plaintiff" and "defendant," respectively, shall be mutually transposed, where necessary for the proper application and construction of any of these Rules or the Forms herewith, or for giving effect thereto; and the word "County" shall include any two or more Counties united for judicial purposes; and in any Form or proceeding, the words "United Counties," shall and may be introduced according to law, and circumstances rendering the same necessary.

SCHEDULE OF FORMS.

1. AFFIDAVIT FOR LEAVE TO SUE A PARTY RESIDING IN AN ADJOINING DIVISION. See Rule No. 90

In the ——— Division Court for the County of ——

A. B., of ———, yeoman, maketh oath and saith that he (*or* E. F. of ———, yeoman, agent for A. B. of, &c., maketh oath and saith that the said A. B.) hath a cause of action against C. D. of ———, yeoman, who resides in the ——— Division of the County of ———, that this deponent (*or* the said A. B.) resides in the ——— Division of the County of ———; that the distance from this deponent's residence (*or* from the said A. B.'s residence) to the place, where this Court is held is about ——— miles, and to the place, where the Court is held in the ——— Division of the County of ——— is about ——— miles; that the distance from the said C. D.'s residence to the place, where the Court is held in the Division where he resides, is about ——— miles, and to the place, where this Court is held about ——— miles; that the said Division and this Division adjoin each other, and that it will be more easy and inexpensive for the parties to have this cause tried in this Division, than elsewhere.

Sworn, &c.

A. B. (*or* E. F.)

---

2. AFFIDAVIT FOR LEAVE TO SUE IN A DIVISION, ADJOINING ONE IN WHICH DEBTORS RESIDE, WHERE THERE ARE SEVERAL. See Rule No. 2

In the ——— Division Court for the County of———

A. B. of ———, yeoman, maketh oath and saith, that he (*or* E. F. of ———, agent for A. B. of, &c., maketh

oath and saith, that the said A. B.) hath a cause of action, respectively, against each of the debtors, named in the first column of the schedule on this affidavit endorsed;—that the columns in the said schedule, numbered respectively 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th, are truly and correctly filled up, according to the best of this deponent's knowledge and belief;—that the Divisions named in the second and third columns of the said schedule, opposite each debtor's name, respectively adjoin each other;—and that it will be more easy and inexpensive for the parties to have the said causes, respectively, tried in this Division, than elsewhere.

Sworn, &c.

A. B. (*or* E. F.)

SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

SCHEDULE REFERRED TO IN THE WITHIN AFFIDAVIT.

COLUMNS.

1st.	2nd.	3rd.	4th.	5th.	6th.	7th.
Debtor's name, place of residence, and addition.	Division in which suit is to be commenced.	Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which debtor resides.	Number of miles from creditor's residence to where Court held in Division in which suit to be commenced.	Number of miles from debtor's residence to where Court held in Division where suit to be commenced.	Number of miles from debtor's residence to where Court held in Division, where debtor resides.
John Doe, of Saltfleet, of the United Counties of Wentworth and Halton, yeoman.	Division No. 8 in the United Counties of Lincoln and Welland.	Division No. 1 in the United Counties of Wentworth and Halton.	22	1	5	17
Richard Roe, of Mono, County of Simcoe, Esquire.	Division No. 8 of the County of Simcoe.	Division No. 8.	23	11	13	4

A. B. (*or* E. F.)

3. PARTICULARS IN CASES OF CONTRACT.

See Rule No. 15 A. B. of —— claims of C. D. of —— the sum of —— ———— [the amount of the following account *or* the amount of the note (a copy of which is under written) together with interest thereon:] *or* for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C.D. hath not performed:— *or*, for that the said C. D. by deed under his seal dated ———, covenanted to, &c., and that the said C. D. hath broken said covenant,—whereby the said A. B. hath sustained damages to the amount aforesaid.]

A. B.

---

4. PARTICULARS IN CASES OF TORT.

See Rule No. 15. A. B. of ——— states, that C. D. of ——— did, on or about the ——— day of ———, A. D. 18—, at the Township of ———, unlawfully [take and convert one cow and one calf, the property of the said A. B.: *or* break and injure a wagon of the said A. B. *or*: keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., *or* kill *or* injure two sheep, the property of the said A. B.: *or* assault and beat the said A. B., (*or as the case may be stating the Tort sued for in concise language*);] The said A.B. hath sustained thereby damages to the amount of ———, and claims the same of the said C. D.

A. B.

---

5. PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF, AND HIS SURETIES.

See Rule No. 16. A. B. of ——— claims of C. D., Clerk (*or* Bailiff) of the —— Division Court for the County of ——, and of E. F. of ———, and G. H. of ———, (sureties for and parties with the said C. D. to a covenant for the due performance of the duties of his said office) the sum of

———— for moneys had and received by the said C. D. as such Clerk (*or* Bailiff) as aforesaid in a certain cause in the said ——— Division Court, wherein the said A. B. was plaintiff, and one H. H. was defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also (*stating in like manner any other similar claim*)—[*or*, the sum of ——— ——— for damages sustained by the said A. B. through the misconduct (*or* neglect) of the said C. D. in the performance of the duties of his said office: For that on the ——— day of ———, at ———, (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned*)].

A. B.

---

6. SUMMONS TO APPEAR.

In the ——— Division Court for the County of ——

No. , A. D. 18—.

Between A. B., plaintiff;

and

C. D., defendant.

To C. D., the above-named defendant.

See Rule Nos. 9, 14, 18, 21 and 22.

You are hereby [as before (*or* as often before) you were] summoned to be and appear, at the sittings of this Court to be holden at ———, in the Township of ———, in the said County of ——, on the —— day of ———, A. D. 18—, at the hour of ——— in the forenoon, to answer the above-named plaintiff in an action on contract, (*or* in an action for Tort) for the causes set forth in the plaintiff's statement of claim hereunto annexed; and, in the event of your not so

appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated the —— day of ——, A. D. 18—.

By the Court.

—— ——, Clerk.

Claim ——

Costs, exclusive of mileage ——.

NOTICE.

Take notice, that if the defendant desires *to set-off any demand against the plaintiff*, (*if the action be for Tort omit the words in Italics*) at the trial or hearing of this cause, (or) to take the benefit of any Statute of Limitations, or other Statute, notice thereof in writing, *and if a set-off containing the particulars of such set-off* (*omit the words last in Italics, if the action be for Tort*) must be given to the plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, if the plaintiff reside without the Division, at least six days before the said trial or hearing.

---

7. AFFIDAVIT OF SERVICE OF SUMMONS.

In the —— Division Court for the County of ——

Between A. B., plaintiff;

and

C. D., defendant.

E. F., Bailiff of the —— Division Court of the said County of —— (*or* of the said Court) maketh oath and saith, that he did on the —— day of ——, 18—, duly serve the said C. D., with a true copy of the annexed summons and statement of claim, by delivering the same personally to the said C. D., (*or if the service was not personal, state how and on whom served*)

and that he necessarily travelled —— miles to make such service.

E. F.

Sworn before me at ———,
this —— day of ——, 18—.

Clerk ———Division Court.

Or,

This Form may be used, when the affidavit is endorsed on the summons:

I swear, that this summons and claim annexed thereto were served by me on the ——— day of ——— by delivering a true copy of both, personally, to the defendant, (*or* to the wife *or* servant of the defendant, *or* to a grown up person being an inmate of, and at the defendant's dwelling) and that I necessarily travelled —— miles to do so.

E. F., Bailiff.

Sworn, &c.

8. NOTICE OF SET-OFF. See Rule No. 29.

In the ——— Division Court for the County of———

Between A. B., plaintiff;
and
C. D., defendant.

Take Notice, that the defendant will set-off the following claim on the trial, viz.: ————————.

Dated this ——— day of ——— 18—.

To A. B., the plaintiff. C. D.

9. NOTICE OF DEFENCE UNDER STATUTE. See Rule No. 29.

In the ——— Division Court for the County of———

Between A. B., plaintiff;
and
C. D., defendant.

The plaintiff is required to take notice, that upon the

hearing of this cause, the defendant intends to give in evidence, and insist upon the following ground of defence, namely, that the claim, for which he the defendant has been summoned, has been barred by the Statute of Limitations (*or as the case may be.*)

Dated this ——— day of ———.

To A. B., the plaintiff. C. D.

N. B. *This notice may be embodied with notice of set-off.*

See Rule No. 80.

10. NOTICE OF ADMISSION TO SAVE UNNECESSARY EXPENSE IN PROOF.

In the ——— Division Court for the County of ———

Between A. B., plaintiff;
and
C. D., defendant.

The plaintiff is required to take notice, that the defendant will admit, on the trial of this cause, the first, second, and third items of the plaintiff's particulars to be correct [*or* the signing and endorsement of the promissory note sued upon (*or as the case may be.*)]

Dated the ——— day of ———, A. D. 18—.

C. D.

N. B. *This notice may be embodied with notice of set-off, or of other defence.*

---

11. CONFESSION OF DEBT AFTER SUIT COMMENCED.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff;
and
C. D., Defendant.

I acknowledge that I am indebted to the plaintiff in the sum of ————, and consent, that judgment for

that amount and costs may be entered against me in this cause.

C. D.

Dated the ——— day of ———, 18—.
Witness———, Clerk (*or* Bailiff,)

---

12. AFFIDAVIT OF EXECUTION OF CONFESSION.

In the ——— Division Court for the County of ———

Betweeen A. B., Plaintiff;
and
C. D., Defendant.

E. F., Clerk (*or* Bailiff) of the ——— Division Court for the said ——— of ——— (*or* of the said Court) maketh oath and saith, that he did see the above (*or* annexed) confession duly executed by the said defendant, and that he is a subscribing witness thereto, and that he, deponent, has not received, and is not to receive anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession, and that he has no interest in the demand, sought to be recovered in this action.

E. F.

Sworn before me at ———,
on the ——— day of ———, 18—.
———,
Clerk, &c., *or* a Commissioner in B. R. in and for the said———.

---

13. SUMMONS TO WITNESS.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff;
and
C. D., Defendant.

You are hereby required to attend at the sittings of the

C

said Court, to be holden at ——— on the ——— 18—, at the hour of ——— in the forenoon, to give evidence in the above cause, on behalf of the above-named ——— [and then and there to have and produce (*state particular documents required*) and all other papers relating to the said action, in your custody, possession, or power.]

Given under the seal of the Court this ——— day of ———, 18—.

———,
Clerk.

To ———

See Rule No. 48.

14. ALLOWANCE TO WITNESSES.

Attendance per day in Court,. . - - - - -	2s	6d
Travelling expenses per mile, one way, - -	0s	6d

---

15. SUMMONS TO JURORS.

In the ——— Division Court for the County of ———

You are hereby summoned to appear and serve as a juror in this Court, to be holden at ——— on ——— at the hour of ——— ; Herein fail not at your peril.

Given under the seal of the Court this ——— day of ———, 18—.

———,
Clerk.

To ———

See Rule No. 51

16. MINUTE IN PROCEDURE BOOK OF JUDGMENT OF NONSUIT, OR DISMISSAL FOR WANT OF PROSECUTION.

Judgment of Nonsuit (*or* that the cause be dismissed) *or* "and that plaintiff pay ——— for defendant's costs" *or* ——— for defendant's trouble, and ——— for his costs ; to be paid in ——— days."

17. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST DEFENDANT FOR DEBT OR DAMAGES. See Rule No. 51.

Judgment for the plaintiff for ——— debt (*or* damages) and ——— costs ; to be paid in ——— days (*when an excess has been abandoned add the words* " being in full discharge of his cause of action.")

---

18. MINUTE IN PROCEDURE BOOK OF JUDGMENT FOR DEFENDANT. See Rule No. 51

Judgment for the defendant (*or* for the defendant for ——— costs ; *or* for ——— on set-off, *or* for his trouble and loss of time, and also ——— for his costs ; to be paid forthwith) (*where an excess in the set-off has been abandoned, add the words* " being in full discharge of his claim, including the excess abandoned.")

---

19. ORDER FOR NEW TRIAL. See Rule No. 52.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff ;

and

C. D., Defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings be set aside, and a new trial be had between the parties on (*set out the terms or conditions, if any, on which the order is made.*)

———————,

Judge.

Dated ——— , 18—.

20. EXECUTION AGAINST THE GOODS OF DEFENDANT.

In the ——— Division Court for the County of ———

No. ——— , A. D. 18—.

Between A. B., Plaintiff;

and

C. D., Defendant.

Whereas at the sittings of the said Court holden on ——— at ———, by the judgment of the said Court, the said plaintiff recovered against the said defendant the sum of ——————— for a certain debt (*or* for certain damages) with ——————— for costs, which said debt (*or* damages,) and costs were ordered to be paid by the said defendant, at a day now past; and whereas the defendant has not made such payment; These are therefore [as before, (*or* as often before)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever the same may be found (except the wearing apparel and bedding of the said defendant, or his family, and the tools or implements of his trade, if any, to the value of £5) the said debt (*or* damages) and costs, amounting together to the sum of ——————— and your lawful fees on the execution of this precept, and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, so that you may have the said sum of ———, within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said plaintiff.

Given under the seal of the Court this _____ day of _____, 18—.

_____,
Clerk.

To_____.
Bailiff of the said Court.

Judgment,

Execution,_____

Paid,_____

Levy,

---

21. EXECUTION AGAINST GOODS OF PLAINTIFF.

In the _____ Division Court for the County of _____
No. _____, A. D. 18—.

Between A. B., Plaintiff;
and
C. D., Defendant.

Whereas at the sittings of this Court, holden on _____ at _____, judgment was given for the defendant, and for the sum of _____ costs (*or* for the sum of _____ on set-off and _____ for costs; *or* judgment of dismissal was given and for the sum of _____ for defendant's trouble, and _____ for costs) to be paid at a day now past; and whereas the plaintiff has not paid the same: These are therefore to command you, forthwith to make and levy by distress and sale of the goods and chattels of the plaintiff, wheresoever the same may be found (except the wearing apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of £5) the said sum of _____ or the said sum of _____ and _____, amounting together to the sum of _____

and your lawful fees on the execution of this precept and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money of the said plaintiff, which may be found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of executing the same, so that you may have the said sum of ——— within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said defendant.

Given under the seal of the Court this ——— day of ———, 18—.

———,
Clerk.

To ———,
Bailiff of the said Court.

Judgment,

Execution,———

Paid,———

Levy,

---

22. AFFIDAVIT FOR ATTACHMENT.

If made after suit commenced, insert style of Court and Cause.

See Rule No. 24 A. B., of———in the county of———,———(*or* E. F., of &c., agent for A. B., of &c.,) maketh oath (*or*, being one of the people called Quakers, &c., affirmeth) and saith, that C. D., of (*or* late of) ———in the County of ———,———, is justly and truly indebted to this deponent (*or* to the said A. B.) in the sum of———[for goods sold and delivered by this deponent (*or* by the said A. B.) to the said C. D. at his request (*or other cause of action, stating the same in ordinary and concise language*)] and this deponent further saith, that he

hath good reason to believe, and doth verily believe, that the said C. D. hath absconded from this Province, leaving personal property liable to seizure under execution for debt in the County (*or* United Counties) of ———[*or* hath attempted to remove his personal property, liable to seizure under execution for debt out of Upper Canada (*or* from the County *or* United Counties of———to another County in Upper Canada) (*or* from Upper to Lower Canada) with intent and design to defraud this deponent (*or* the said A. B.) of his said debt [*or* keeps concealed in the County *or* United Counties of ———to avoid service of process (*or as the case may be*)] with intent and design to defraud this deponent (*or* the said A. B.) of his said debt; and this deponent further saith, that this affidavit is not made, nor the process thereon to be issued, from any vexatious or malicious motive whatever.

Sworn before me at———in the County of——— this——day of———18

———
Clerk &c.

} A.B. (*or* E.F.)

N. B. *If the party sues in a special character, as executor or the like, it should be stated in the Affidavit, in what character he claims the debt.*

---

23. BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the———Division Court for the County of———

Between A. B. plaintiff,

and

C. D. defendant.

Know all men by these Presents, that we A. B. of——— (*insert place of residence and addition*) the above-named plaintiff, E. F. of &c. and G.G. of &c. are, and each of

us is, jointly and severally held and firmly bound to ——of &c. the above-named defendant, in the sum of——of lawful money of Canada, to be paid to the said defendant, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each, and every of us, binds himself, his heirs, executors, and administrators firmly by these Presents.

Sealed with our respective seals.

Dated this ——day of——A.D. 18—

Whereas the above-named plaintiff hath sued out of the above-named Court (*or* from a Justice of the Peace) a Warrant of Attachment against the goods and chattels of the above-named defendent, and hath requested that certain perishable property, to wit (*specify property*) belonging to the above-named defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said Warrant of attachment [*or* Whereas certain perishable property, to wit——, belonging to the above-named defendant, hath been seized under and by virtue of a Warrant of attachment, issued out of the above-named Court (*or* by a Justice of the Peace) in the above-named cause, and hath been duly appraised and valued at the sum of——and is now in the hands of the Clerk of the said Court; and Whereas the said above-named plaintiff hath requested the said Clerk to expose and sell the said goods and chattels as perishable property] according to the form of the Statute in that behalf.

Now the condition of this obligation is such, that if the said above-named plaintiff, his heirs, executors or administrators, do repay to the said above named defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages, that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff, according to the true intent of the 70th section of "The Upper Canada Division

Courts Act of 1850 ": Then this obligation to be void—else to remain in full force and virtue.

Sealed and delivered in presence of

A. B. [L. S.]
E. F. [L. S.]
G. G. [L. S.]

---

24. BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff;
and
C. D., Defendant.

Know all men by these presents, that we C. D. of (*insert place of residence and addition*) the above named defendant, E. F. of &c., and G. G. of &c., are, and each of us is, jointly and severally held and firmly bound to A. B., of &c., the above-named plaintiff in the sum of ——————— of lawful money of Canada, to be paid to the said plaintiff, his certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every of us binds himself, his heirs, executors and administrators firmly by these Presents.

Sealed with our respective seals.

Dated the ——— day of ———, 18—

Whereas the above-named plaintiff hath sued out of the above named Court (*or* from a Justice of the Peace) a warrant of attachment against the goods and chattels of the above-named defendant, for the sum of ——————— and under and by virtue of the said warrant of attachment, certain goods and chattels of the said defendant, to wit: (*specify property seized*) have been seized and attached; and the said defendant de-

sires, that the said warrant be superseded, and the said property, so attached, restored to him under the provisions of the 67th clause of "The Upper Canada Division Courts Act of 1850."

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment: Then this obligation to be void—else to remain in full force and virtue.

Sealed and delivered in presence of } C. D., (L.S.) E. F., (L.S.) G, G., (L.S.)

See Rule No. 69.

25. ORDER OF REFERENCE.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff;
and
C. D. Defendant.

By consent of the above-named plaintiff and defendant (*or* agents *if so*) given in open Court (*or* produced in writing to the Court) It is ordered, that all matters in difference in this cause (*and if consented to add* "and all other matters within the jurisdiction of this Court in difference between the said parties") be referred to the award of ..... so as said award be made in writing, ready to be delivered to the parties entitled to the same, on or before the ——— day of ——— ; and that the said award may be entered as the judgment in

this cause (*add any special terms as*") "the costs of reference to be in the discretion of the arbitrator" *or* "the costs of the action to abide the event of the suit."

Given under the seal of the Court this ——— day of ———, 18—.

———————,
Clerk.

———

26. AWARD. See Rule No. 69.

The Award should be endorsed on the order in the following Form.

After hearing and considering the proofs laid before me (*or* us) in the matter of the within reference, and in full determination of the matters to me (*or* us) referred, I (*or* we) do award, that the within named A. B. is entitled to recover from the within named C. D. the sum of ——————— together with the costs of this suit, and also ——————— the costs of this reference, (*or as the case may be*) and that the same shall be paid by the said C. D. within ——— days, and that judgment be entered in the within mentioned case accordingly.

———————,
Arbitrator.

Dated this ——— day of ——— , 18—.

———

27. MINUTE IN PROCEDURE BOOK OF JUDGMENT ON AWARD. See Rule No. 51.

Judgment for the plaintiff, (*or* defendant) for ——— costs (*or* for the sum of ——————— and ——— costs) pursuant to award; to be paid in ——— days.

See Rule No. 53.

28. SUMMONS TO PLAINTIFF ON INTERPLEADER.

In the ——— Division Court for the County of ———

Between A. B., Plaintiff;
and
C. D., Defendant.

Whereas ——— of ——— hath made a claim to certain goods, [*or* to certain securities *or* money (*as the case may be*,)] viz: (*here specify*) which have been seized and taken in execution (*or* attached) under and by virtue of process, issuing out of this Court, in this action (*or* by a Justice of the Peace); you are therefore hereby summoned to be and appear before the Judge of the said Court at ——— on ——— at the hour of ———, when the said claim will be adjudicated upon, and such order made thereupon, as to the Court shall seem fit.

Given under the seal of the Court this ——— day of ———, 18—.

———,
Clerk.

To ———,

The above-named plaintiff.

N.B.—The claimant is called upon to give particulars of his claim, which you may inspect on application at the office of the Clerk of the Court, five days before the day of hearing.

See Rule No. 53.

29. INTERPLEADER SUMMONS TO CLAIMANT.

In the ——— Division Court for the County of ———

Between A. B,, Plaintiff;
and
C. D., Defendant.

You are hereby summoned and required to appear at a Court, to be holden on ——— at the hour of ———

at ———, touching a claim made by you to certain goods and chattels [*or* moneys, &c., *or* securities (*as the case may be*)] ; viz : (*here specify*) seized and taken in execution (*or* attached) under process issued out of this Court in this action, (*or* by a Justice of the Peace) and in default of your then establishing such claim, the said goods and chattels will be sold, (*or* the said moneys &c. paid and delivered over) according to the exigency of the said process : and take Notice, that you are required, five days before the said ——— day of ——— to leave at the Clerk's office a particular of the goods and chattels, (*or as the case may be*) so claimed by you, and the grounds of your claim.

Given under the seal of the Court this ——— day of ——— , 18—.

———,
Clerk.

To ——— ,

Of ——— (*the claimant.*)

———

30. PARTICULARS OF CLAIM ON INTERPLEADER. See Rule No. 58

In the ——— Division Court for the County of ———

Between A. B., Plaintiff ;
and
C. D., Defendant.

To whom it may concern—

E. F. of ——— claims as his property the following goods and chattels, (*or* moneys, &c.) seized and token in execution, (*or* attached) as it is alleged, namely, (*specify the goods and chattels, or chattels or moneys, &c. claimed*) and the grounds of claim are (*set forth in ordinary language the particulars, on which the claim*

is grounded); and this the said E. F. will maintain and prove.

E. F.

Dated this ——— day of ——— 18—.

N. B.—*If any action for the seizure has been commenced, state in what Court and how the action stands.*

See Rules Nos. 51 and 53.

31. MINUTE IN PROCEDURE BOOK OF ADJUDICATION ON INTERPLEADER.

Adjudged, that the goods [*or* the goods chattels and moneys, *or* proceeds of the goods, &c. (*as the case may be*)] mentioned in the Interpleader Summons [*if only for a part of the goods &c. add the words* "hereafter mentioned that is to say (*here enumerate them*)] are (*or* are not) the property of E. F. (the *claimant*,) *or* that rent to the amount of ——— is due to E. F. (the *claimant*); Ordered that ———, the costs of this proceeding be paid by (*here insert such order as the costs or the subject in dispute, if any, as the Judge shall have made*) in ——— days.

See Rule No. 58.

32. EXECUTION AGAINST THE GOODS OF CLAIMANT ON INTERPLEADER.

In the ——— Division Court for the County of ———

Between A. B., plaintiff;
and
C. D., defendant,
E. F., Claimant.

Whereas at the sittings of the said Court, holden on ——— at ——— by the judgment of the said Court, the said plaintiff recovered against the said defendant the sum of ——— for a certain debt, before that time due and owing to the said plaintiff (*or* for certain damages

sustained by the said plaintiff) and costs of suit, which said debt (*or* damages) and costs were ordered to be paid by the said defendant at a day now past; and whereas the said sum and costs not being paid, an execution issued against the goods of the said defendant, under which certain goods and chattels were seized [*If the Interpleader was in respect to goods attached, omit all the preceding after the word "claimant" and say in lieu thereof as follows*—"Whereas a writ of attachment was sued out of this Court *or* issued by a Justice of the Peace) under which certain goods and chattels, &c. were seized and attached"] to which the above-named claimant made claim, and which claim came on to be heard and decided, upon Interpleader summons, at a sitting of this Court held on ——— at ———, and at such last mentioned Court it was adjudged, touching the said claim, that the goods [(*or* the goods, chattels and moneys, *or* proceeds of the goods, &c. (*as the case may be*)] mentioned in the Interpleader summons [*If only for a part of the goods, &c., add the words*—" hereafter mentioned, that is to say (*here enumerate them*)] were not the property of E. F. (*the claimant*); and it was ordered that the sum of ——— the costs of that proceeding should be paid by the said claimant to the Clerk in ——— days, for the use of the said plaintiff; and whereas the said sum of ——— has not been paid, pursuant to the said order: These are therefore to require you to make and levy by distress and sale of the goods and chattels of the said claimant, wheresoever the same may be found (except the wearing apparel and bedding of the said claimant or his family, and the tools or implements of his trade, if any, to the value of £5) the said sum of ———, and your lawful fees on the execution of this precept; and also, if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialities or securities for money of the said claimant, which may be found, or such part thereof as may be sufficient for the satisfying of

this execution, and the costs of making and executing the same, so that you may have the said sum of ——— within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said plaintiff.

Given under the seal of the said Court this ——— day of ———, 18—.

———,
Clerk.

To ———,
Bailiff of the said Court.

Costs,

Execution,———

Paid,———

Levy.

See Rule No. 51. 33. MINUTE IN PROCEDURE BOOK OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Judgment for the plaintiff for ——— and ——— costs, to be paid in ——— days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels.

See Rules Nos. 51 and 57. 34. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS WASTED ASSETS.

Judgment for the plaintiff for ——— and ——— costs, to be paid in ——— days, to be levied of the goods and chattels of the deceased; failing such goods, then the whole (*or* the sum of ——— and the said costs) to be levied of the defendant's proper goods and chattels; the defendant having wasted the goods of the deceased to that amount.

35. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO HAS DENIED HIS REPRESENTATIVE CHARACTER, OR PLEADED A RELEASE TO HIMSELF. See Rules Nos. 51 and 58.

Judgment for the plaintiff for ———, and ———costs, to be paid in ——— days, to be levied of the goods and chattels of the deceased; failing such goods, then to be levied of the defendant's proper goods, the defendant having pleaded a Release to himself, (*or* "the defendant having denied his representative character") and this plea being found against him.

---

36. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND DENIES THE DEMAND. See Rules Nos. 51 and 59.

The same as in ordinary judgment against Executor or Administrator. See Form No. 33.

---

37. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS: AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION. See Rules Nos. 51 and 60.

Judgment for the plaintiff for —— debt, and also —— costs, to be paid in ——— days; the plaintiffs demand having been proved, which was denied, and full (*or* partial) administration also having been proved, which was denied, the said costs to be levied of the goods and chattels of the deceased; failing such goods, then of the defendant's proper goods; the said debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered; and ordered that ———, the costs of proving

such administration, be paid by the plaintiff in ——— days.

N. B.—If the defendant is shown to have some assets, the judgment must be for the amount "de bonis testatoris," and for the residue," quando acciderint."

See Rules Nos. 51 and 61.

38. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT DOES NOT PROVE ADMINISTRATION.

Judgment for the plaintiff for ———, debt, and also ———, costs, to be paid in ——— days, to be levied of the goods and chattels of the deceased; failing such goods, then the said costs to be levied of the defendant's proper goods, and the debt to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered, the plaintiff's demand having been proved, which was denied, and administration, which was alleged, not having been proved.

See Rules Nos. 51 and 62.

39. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND PROVES THE ADMINISTRATION.

Judgment for the plaintiff for ———, to be paid in ——— days; to be levied of the goods and chattels of the deceased, hereafter to come to the defendant's hands to be administered:—the debt not being denied, and

full (*or* partial) administration, which was denied, having been proved, Ordered, that the plaintiff pay———, for the defendant's costs in ——— days,

---

40. MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR, WHO ADMITS HIS REPRESENTATIVE CHARACTER, AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND DOES NOT PROVE THE ADMINISTRATION. See Rules Nos. 51 and 63.

Judgment for the plaintiff for ———, debt, and———, costs, to be paid in ——— days; full (*or* partial) administration, which was alleged, and disputed, not having been proved, Ordered, that the said sums be levied of the goods and chattels of the deceased; failing such goods, then the debt of the goods and chattels, hereafter to come to the defendant's hands to be administered; and the said costs to be levied of the defendant's proper goods.

---

41. SUMMONS TO EXECUTOR OR ADMINISTRATOR, WHERE PLAINTIFF INTENDS TO APPLY TO THE COURT, ALLEGING THAT ASSETS HAVE COME TO THE DEFENDANT'S HANDS SINCE JUDGMENT. See Rule No. 64.

In the ——— Division Court for the County of ———

Between A. B., plaintiff;
and
C. D., Executor, (*or* administrator,)
Of E. F., deceased, defendant.

The plaintiff having learned, that property of the said deceased has come to your hands as executor, (*or* administrator) since the judgment herein, to be administered (and that you have withheld and wasted the same)

intends to apply at the next sitting of this Court, to be holden at ——— in ——— on the ———day of ——— at the hour of ———, for an order, that the debt, (*or* damages) and costs be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered, (and that if you have not, then that it shall be levied of your own proper goods and chattels) and that the costs be levied of your proper goods and chattels.

You are, thereupon, hereby summoned to be and appear at the said Court, at the time and place aforesaid, to answer touching the matter aforesaid.

Dated this ——— day of ———, 18—.

———,
Clerk.

To ———,
The above named defendant.

See Rule No 56.

42. SUGGESTION OF DEVASTAVIT ON ORIGINAL SUMMONS.

See Form No. 6.

(*Commence with Form of Summons, same as in ordinary cases, but naming defendant as executor or administrator, and adding after the word* "default") and the plaintiff alleges, that you the defendant have money, goods, and chattels, which were the property of ——— deceased, at the time of his death, and which came to your hands as such executor (*or* administrator) to be administered; and if not, that you have withheld or wasted the same.

See Rule No. 56.

43. SUMMONS ON A DEVASTAVIT.

In the ——— Division Court for the County of———

Between A. B., plaintiff;
and
C. D., Executor, (*or* administrator) of
E. F., deceased, defendant.

To C. D. the above-named defendant—

You are hereby [as before (*or* as often before) you

were] summoned to be and appear at the sittings of this Court, to be holden at ——— in the Town of——— on the ——— day of ———, A. D., 18—, at the hour of ——— in the forenoon, to answer the above-named plaintiff in an action, for that you, the defendant, have withheld and wasted divers goods and chattels, which were the property of E. F. deceased, at the time of his death, and which came to the hands of you the defendant, as executor (*or* administrator) of the said E. F. to be administered, whereby a certain judgment recovered against you by the plaintiff at the sittings of this Court on ——— at ——— for the sum of——— remains unsatisfied; and in the event of your not appearing, the plaintiff may proceed to obtain judgment against you by default.

Dated this ——— day of ———, 18—.

———,

Clerk.

Add notice as in Form 6.

---

44 MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR ON DEVASTAVIT AFTER JUDGMENT.

See Rules Nos. 51 and 64.

Judgment that the defendant has wasted goods and chattels of ——— deceased to the sum of———, whereby a judgment, recovered against, him by the plaintiff in the ——— Division Court for the County of ——— on the——— day of ———, remains unsatisfied; and that the plaintiff now recover against the defendant the first named sum, and also ——— costs; to be paid in——— days.

———,

Judge,

Dated this ——— day of ———.

45. SUMMONS ON BEHALF OF EXECUTOR OR ADMINISTRATOR TO REVIVE A JUDGMENT.

See Rule No. 63.

In the ——— Division Court for the County of———

No. , A.D., 18— .

Between A. B., Executor of C.D., deceased, plaintiff;
and
E. F., defendant.

To E. F. the above-named defendant—

Whereas at the sittings of this Court (*or* the ——— Division Court, &c.,) held at ——— on ———, the above-named C. D., in his life-time, obtained a judgment against you for the sum of ———, and costs, which judgment, a transcript of which is hereto annexed, still remains unsatisfied, and the said plaintiff, as executor as aforesaid, claims to have execution thereof; you are hereby summoned to appear at the sittings of this Court to be holden at ——— on ——— at ——— in the forenoon, to show cause, if any you have, why the said plaintiff, executor as aforesaid, should not have execution against you of the said judgment, according to the force and effect of the said recovery: and, in the event of your not appearing, judgment will be entered against you by default.

See Form 52.

By the Court,

———,

Clerk,

Dated this——— day of ———, 18—.

Claim,———

Costs exclusive of mileage.———

46. SUMMONS TO REVIVE JUDGMENT AGAINST AN EXECUTOR. See Rule No. 68.

In the —— Division Court for the County of ——

No.—A. D., 18—

Between A. B., plaintiff;

and

C. E., Executor of E. F., deceased, defendant.

Whereas at the sittings of this Court (*or* the —— Division Court for &c.) held at—————— on ——, &c., the said plaintiff recovered against the said E. F., in his life-time, the sum of ———, which judgment, a transcript whereof is hereto annexed, still remains unsatisfied; and the said plaintiff claims to have execution thereof against you, as executor of the said E. F.: you are hereby summoned to appear at the sittings of this Court, to be holden at ——, on ....., at the hour of——, to show cause, if any you have, why the said plaintiff should not have execution of the said judgment against you, as executor as aforesaid, to be levied of the goods and chattels of the said E. F. deceased, in your hands to be administered: and in the event of your not appearing, judgment herein will be entered against you by default. See Form No. 52.

Dated this —— day of ——, 18—.

By the Court,

....., Clerk.

Amount claimed,——

Costs exclusive of mileage.——

---

47. MINUTE IN PROCEDURE BOOK OF JUDGMENT FOR EXECUTOR TO REVIVE A JUDGMENT. See Rules Nos. 51 and 68.

Judgment for plaintiff, that he have execution against the defendant of a judgment of this Court (*or* of the—

Division Court, &c.) whereby the said C. D. in his life-time, on ....., recovered against the said defendant the sum of ..... .

See Rules Nos. 51 and 63.

48. MINUTE IN PROCEDURE BOOK OF JUDGMENT TO REVIVE A JUDGMENT AGAINST AN EXECUTOR.

Judgment for the plaintiff, that he have execution against the defendant, as executor of E. F. deceased, of a judgment of this Court (*or* of the——Division Court, &c.) whereby the plaintiff, on ———, recovered against the said E. F. in his life-time the sum of———, to be levied of the goods and chattels of the said deceased, in the hands of the said defendant to be administered.

---

49. EXECUTION AGAINST GOODS OF TESTATOR.

In the ——— Division Court for the County of ——

Between A. B., plaintiff;
and
C. D., Executor (*or* administrator of F., deceased, defendant

Whereas at a sitting the said Court, holden on ——— at ——— by the judgment of the said Court, the said plaintiff recovered against the said defendant as executor (*or* administrator) of E. F. deceased, the sum of ———, for a certain debt, with ———, for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and

the defendant has not paid the same : These are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his life-time, in the hands of the defendant to be administered, wheresoever the same may be found, the said debt and costs, amounting together to the sum of ——— , together with the costs of this execution ; and also, and if necessary for that purpose, to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, which were the property of the said E. F. in his life-time, in the hands of the said defendant to be administered, which may be found, or such part thereof, as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the defendant have so much thereof in his hands to be administered ; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods, notes and chattels, money, &c. (*repeat*) of the defendant, the sum of ———, for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the Clerk of the Court, for the said plaintiff.

Given under the Seal of the Court this —— day of ———, 18—.

———,
Clerk.

To ———,
Bailiff of the said Court.

Debt, ———,
Costs———

Execution——.

Paid,——.

Levy, ——.

(*See following page.*)

N.B.—*Warrants of execution upon the judgment given in other cases against executors may be drawn from this Form, with the requisite alterations.*

See Rule No. 68.

50. EXECUTION FOR AN EXECUTOR ON JUDGMENT REVIVED IN HIS FAVOUR.

In the ——— Division Court for the County of———

Between A. B., Executor of C. D. deceased, plaintiff

and

E. F., defendant.

You are hereby commanded (*or* as before *or* as often before) to make and levy by distress and sale of the goods and chattels of the said defendant, (except the wearing apparel and bedding of the said defendant and his family, and the tools and implements of his trade, if any, to the value of £5) the sum of ....., which C.D. in his life-time in this Court (*or* the ..... Division Court, &c.) on ———, recovered against the said defendant for his debt (*or* damages) and costs, and whereof it was on ——— &c. in this Court (*or* the ..... Division Court, &c.) adjudged, that the said plaintiff, as executor of the said C. D., should have execution, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money, or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay

the same over to the Clerk of the Court, for the use of the said plaintiff, as executor as aforesaid.

Given under the seal of the Court this ——— day of ——— 18—.

———,
Clerk.

To ———,
Bailiff.

Due on Judgment, ——.

Execution ——.

Bailiff's Fees ——.

---

51. EXECUTION ON JUDGMENT REVIVED AGAINST EXECUTOR OR ADMINISTRATOR. See Rule No. 53

In the ——— Division Court for the County of ——

Between A. B., plaintiff;

and

C. D., Executor of E. F., deceased, defendant.

You are hereby commanded (*or* as before *or* as often before) to make and levy by distress and sale of the goods and chattels of E. F. deceased in the hands of the said defendant, as his executor (*or* administrator) to be administered, the sum of ———, which the said plaintiff in this Court, (*or* in the ——— Division Court &c.) on———, recovered against the said deceased in his life-time for the said plaintiff's debt (*or* damages) and costs, and whereof it was on ——— adjudged in this Court, (*or* in the ——— Division Court, &c.) that the said plaintiff should have execution against the said

defendant as executor (*or* administrator) of the said deceased, to be levied of the goods and chattels of the said deceased, in the said defendant's hands to be administered, together with the costs of execution herein, and bailiff's fees; and also, and if necessary for that purpose, you are to seize and take any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said deceased, or such part thereof as may be sufficient for the satisfying of this execution; so that you may have the said moneys within thirty days, and pay the same over to the Clerk of the Court, for the use of the said plaintiff as executor (*or* administrator) as aforesaid.

Given under the seal of the Court this ——— day of ———, 18—.

———,
Clerk.

To ———,
Bailiff.

Due on Judgment——,

Interest ———

Execution costs ——

Bailiff's fees ———.

---

52. TRANSCRIPT OF JUDGMENT.

In the ——— Division Court for the County of ———

Between A. B,. plaintiff;
and
C. D., defendant.

The following proceedings were had—

On the ——— day of ———, a summons, requiring the defendant to answer the plaintiff's claim, for a debt

or for damages) amounting to———, was issued out of this Court in this cause, according to the statute in that behalf:—on the ——— day of ——— the said defendant was duly served with a copy of the said summons, and of the particulars of the plaintiff's claim:—at the sittings of the said Court, holden on the ——— day of ——— at ———, the said cause came on to be tried, and the following judgment was then and there rendered by the Court (*here copy the minute of judgment from the procedure book*):—On the ———, day of ———, a writ of execution upon the said judgment was duly issued out of the said Court by the Clerk thereof, which said writ of execution was directed to ———, a bailiff of the said Court, and commanded him to levy the sum of ———, of the goods and chattels of the said defendant:—On the ——— day of ——— the said bailiff returned the said writ of execution with a return thereto, in the following words, (*copy bailiff's return*) Pursuant to the 57th section of "The Upper Canada Division Courts Act of 1850," I ———, Clerk of the said Division Court for the ———, do hereby certify and declare, that the forgoing is a faithful transcript of the judgment and proceedings in the above cause, as shown and as appears, by the original entries and records of the Court.

Given under the seal of the said Court this ——— day of ———, 18—.

———,
Clerk.

N. B.—*The above Form may be adopted, when the Judge certifies a judgment into another County.*

---

53. CERTIFICATE OF JUDGMENT FOR REGISTRATION.

In the ——— Division Court for the County of ———

I, R. B., Clerk of the said Court, do hereby certify, that judgment was rendered in the said ——— Di-

vision Court, in favour of ——, plaintiff, against C. D. of ——, defendant, on the —— day of in the year of our Lord, &c., in an action on contract, (*or* for Tort) for the sum of ——, debt (*or* damages) and ——, costs of suit, in all, ——, which defendant was ordered by the said Court to pay in days (*or as the judgment may be*).

No. ——, A. D. 18—.

Given under my hand and the seal of the said Court this day of , 18—.

R. B., Clerk.

---

54. APPLICATION FOR JUDGMENT SUMMONS.

To R. B., Clerk of the —— Division for the County of ——

See Rules Nos. 17 and Form No. 55.

Be pleased to summon —— of &c., to answer according to the statute in that behalf, touching the debt due me by the judgment of the —— Division Court on my behalf, a minute whereof is hereunto annexed.

A. B., plaintiff.

See Rule No. 17.

55. SUMMONS TO DEFENDANT AFTER JUDGMENT.

In the —— Division Court for the County of ——
No. —— , A. D. 18—.

Between A. B., plaintiff;

and

C. D., defendant.

To C. D. the above-named defendant—

Whereas at the sittings of this Court (*or* the—— Division Court for &c.) held at——, on &c., the above

named plaintiff obtained a judgment against you, for the payment of the sum of ——, which said judgment still remains unsatisfied; you are therefore hereby summoned to appear at the next sittings of this Court, to be holden at —— on the —— day of ——, at the hour of ——, to be then and there examined by the Judge of the said Court, touching your estate and effects, and the manner and circumstances, under which you contracted the said debt, (*or* incurred the damages *or* liability) which was the subject of the action, in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt (*or* damages *or* liability), and as to the disposal you may have made of any of your property:—And take notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the Common Jail of the County.

Given under the seal of the Court this —— day of ——, 18—.

By the Court,

——,
Clerk.

Amount of Judgment

Costs of this summons ——.

---

56. WARRANT OF COMMITMENT IN DEFAULT OF APPEARANCE. See Rule Nos. 10, 18 and 55.

In the —— Division Court for the County of ——

No.—, A. D., 18—.

Between A. B., plaintiff;
and
C. D., defendant.

To ——, Bailiff of the said Court, and to all Constables and Peace Officers of the County of ——

and to the Jailer of the Common Jail of the said County of ——————.

Whereas at the sittings of this Court, (*or* of the ——— Division Court for &c.,) holden at ———, on the ——— day of——————, the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the above-named defendant, the sum of ——————, for his debt (*or* damages) and costs of suit, which were ordered to be paid at a day now past :—And whereas the defendant, not having made such payment upon application of the plaintiff, a summons was duly issued from and out of this Court, against the said defendant, by which said summons the defendant was required to appear at the sittings of this Court, holden at———on &c., to answer such questions as might be put to him, touching (*set out as in the summons*) :—And whereas it was duly proved, on oath, at the said last mentioned sittings of this Court, that the said defendant was personally served with the said summons :—And whereas the said defendant did not attend, as required by such summons, nor allege any sufficient cause for not so attending : And thereupon it was ordered by the Judge of this Court that the said defendant should be committed, for the term of ——— days, to the Common Jail of the said County, according to the form of the statute in that behalf, or until he should be discharged by due course of law :—These are therefore to require you, the said Bailiff, and others, to take the said defendant, and to deliver him to the Jailer of the Common Jail of the said County : And you the said Jailer are hereby required to receive the said defendant, and him safely to keep in the said Common Jail for the term of ——— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf : For which this shall be your sufficient warrant.

See Form No. 55.

Given under the seal of the Court this ——— day of ———, 18—.

———————,
Clerk.

———

57. WARRANT OF COMMITMENT AFTER EXAMINATION. See Rules Nos. 10, 18 and 55.

In the ——— Division Court for the County of———

No. ——, A. D., 18—.

Between A. B., plaintiff;

and

C. D., defendant.

To ———, Bailiff of the said Court, and to all Constables, and Peace Officers of the County of ———, and to the Jailer of the Common Jail for the said County.

Whereas at the sittings of this Court (*or* the ——— Division Court for &c.) holden at ——— on the——— day of &c., the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the above-named defendant the sum of ———————, for his debt (*or* damages) and costs, which were ordered to be paid at a day now past: And whereas the defendant not having made such payment, upon application of the plaintiff, a summons was duly issued from and out of this Court, against the said defendant, by which said summons the defendant was required to appear at the sittings of this Court, holden at——on &., to answer such questions as might be put to him, touching (*set out as in the summons*): And whereas the defendant having duly appeared at the said Court, pursuant to the said summons, was examined touching the said matters: And See Form No. 55.

whereas it appeared, on such examination, to the satisfaction of the Judge of the said Court, that [*here insert the particular ground of commitment in the language used in the Statute e. g.* "C. D. the said defendant incurred the debt (*or* liability) the subject of this action under false pretences" (*or* by means of fraud *or* breach of trust")] : And thereupon it was ordered by the said Judge, that the said defendant should be committed for the term of ——— days to the Common Jail of the said County, according to the form of the Statute in that behalf, or until he should be discharged by due course of law :—These are therefore to require you, the said Bailiff and others, to take the said defendant, and to deliver him to the Jailer of the Common Jail of the said County ; and you the said Jailer are hereby required to receive the said defendant, and him safely keep in the said Common Jail, for the term of ——— days from the arrest under this warrant, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf; For which this shall be your sufficient Warrant.

Given under the seal of the Court this ——— day of ———, 18—.

———,

Clerk.

---

58. CERTIFICATE FOR DISCHARGE OF A PARTY FROM CUSTODY.

In the ——— Division Court for the County of ———

No. —, A. D., 18—.

Betweeen A. B., plaintiff;
and
C. D., defendant.

I do hereby certify, that the defendant, now in your

custody under Warrant of Commitment in this cause has, since the issuing of the said Warrant, to wit, on the ——day of ——, paid and satisfied the judgment, for the non-payment whereof he was so committed, together with all costs and charges, due and payable by him in respect thereof; and the said defendant may, in respect of such Warrant, be forthwith discharged from and out of your custody.

Given under the seal of the Court this —— day of ——, 18—.

——————,
Clerk.

To the Jailer of the Common Jail of the County of——.

---

61. MINUTE IN PROCEDURE BOOK OF IMPOSITION OF FINE ON WITNESS. See Rule No. 61.

Adjudged that H. H. was duly summoned to appear as a witness, in this action, at the sittings of this Court here this day, [and also to produce (*as the case may be*)] that payment (*or* a tender of payment) of his reasonable expenses was made to him,—and that he did not appear [*or* having appeared, did wilfully refuse to be sworn, and give evidence in this action (*or* to produce such &c.)] (*Or* Adjudged, that H.H. being before this Court, now holden and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.) And further adjudged that the said H. H. pay a fine of——————, for such neglect, (*or* refusal) in —— days, (*or* forthwith); And that the

sum of ———, part of the said fine, be paid by the Clerk to the plaintiff (*or* defendant) being the party injured by such neglect or refusal.

See Rule No. 51.

60. MINUTE IN PROCEDURE BOOK OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

It is adjudged that E. F., at the sittings of this Court now holden, in open Court is guilty of a contempt of the said Court, by wilfully insulting ———, Judge (*or* Deputy Judge) of the said Court [*or* " in view of the Court, by wilfully insulting ———, Clerk (*or* Bailiff) of the said Court, during his attendance at such Court" (*or* " by wilfully interrupting the proceedings of the said Court")] : And it is ordered, that the said E.F. forthwith pay a fine of ———, for such offence, and, in default of payment, be committed to the Common Jail of this County, for ——— days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

See Rule Nos. 51.

61. MINUTE IN PROCEDURE BOOK OF IMPOSITION OF FINE ON A JUROR, FOR NON-ATTENDANCE.

Adjudged that G. H. was duly summoned to attend this Court now holden, as a Juror ;—that he hath made default therein,—that he pay a fine of ———, for such default, in ——— days (*or* forthwith.)

See Rules Nos. 10 13 and 55.

62. WARRANT OF COMMITMENT FOR CONTEMPT.

In the ——— Division Court for the County of ———

To ———, Bailiff of the said Court, and to all

Constables and Peace Officers of the County of———, and to the Jailer of the Common Jail of the said County of ——— .

Whereas at the sittings of this Court, holden on ——— at ——— it was adjudged, that E. F. did, then and there in open Court, wilfully insult me ———, Judge (*or* Deputy Judge) of the said Court [*or* did, in view of the Court, wilfully insult ———, Clerk, (*or* Bailiff) of the said Court, during his attendance at such Court (*or* did unlawfully interrupt the proceedings of the said Court)]; And it was ordered, that the said E.F. should forthwith pay a fine of ——— , for such offence, and in default of payment, be committed to the Common Jail of the County of——for ——— days; And whereas the said E.F. did not pay the said fine, in obedience to the said order: These are therefore to require you, the said Bailiff and others, to take the said E. F., if he shall be found within the ——— , and deliver him to the said Jailer of the Common Jail of the County of——; And you the said Jailer are hereby required to receive the said E. F., and him safely keep in the Common Jail aforesaid, for the term of ——— days from the arrest under this warrant, unless the said fine and costs, the costs amounting to———, and also the expenses attending the commitment, amounting together to the sum of——— , be sooner paid.

Given under my hand and seal this ——— day of ———, 18—.

———————, [L. S.]
Judge.

Sealed with the seal of the Court, [L.S.]
———————,
Clerk,

63. WARRANT TO LEVY FINE UPON WITNESS.

In the ——— Division Court for the County of ———

Between A. B. plaintiff,

and

C. D., defendant,

Whereas at the sittings of this Court, holden on ———, at ———, it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this Court [and also to produce (*as the case may be*)]; that payment (*or* a tender of payment) of his reasonable expenses was made to him, and that he did not appear [*or* having appeared did wilfully refuse to be sworn and give evidence in this action (*or* to produce such &c.)] : (*where a witness in Court refuses to give evidence instead of the foregoing, commence* "Whereas ———, being before the Court at a sittings thereof, and called upon to give evidence, in the above cause, did wilfully refuse to be sworn and give evidence"); And thereupon it was adjudged, that the said ——— should pay a fine of ———, for such neglect. (*or* refusal) in ——— days: (*or* forthwith): And whereas the said ——— hath not made such payment: These are therefore (as before *or* as often before) to command you, forthwith to make and levy by distress and sale of the goods and chattels of the said ———, wheresoever the same may be found, (except the wearing apparel and bedding of the said ——— or his family, and the tools and implements of his trade, if any, to the value of £5) the said fine and costs amounting together to the sum of ———, and your lawful fees on the execution of this precept; and also to seize and take any money, or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money, of the said ———, which may be then found, or such part thereof, as may be sufficient for the satisfying of this execution and the

costs on the same; so that you may have the said sum o ———, within thirty days after the date hereof, and pay the same over to the Clerk of the Court.

Given under the seal of the Court this ——— day of ———, 18—,

By order of the Judge,

———————,

Clerk.

To ——————— } Bailiff of the said Court.

Fine, ———.

Costs, ———.

Execution, ——.

See Rule No. 4

64. PROCEDURE BOOK.

—— Division Court, for the———
Ensuing Sittings, 26th February, 1851.

No. 1. A. D. 18—.

JOHN DOE *vs.* THOMAS ROE.
Town of Township of

1851.

1st Jan.	Received particulars of plaintiff's demand (on contract) for £2, and plaintiff paid 1s. 8d. towards costs.
11th "	Issued summons to Bailiff, costs 1s. 8d., and mileage.
24th "	Summons returned served the —— day of ——.
28th "	Defendant paid £2. 1s. 8d. demand and costs.
10th Feb.	Paid plaintiff £2. 1s. 8d., demand and costs, deposited.

No. 2. A. D. 18—.

JOHN DEN *vs.* THOMAS FEN.
Township of Town of

10th Jan.	Received particulars of plaintiff's demand (for Tort) for £5; plaintiff paid on account of costs 15s., and directed two subpœnas, and gave notice to try by Jury.
12th "	Issued summons to Bailiff, costs 5s. 9d., and mileage.
20th "	Summons returned served the —— day of ——.
8th Feb.	Issued Jury Summonses and subpœnas to Bailiff.
13th "	Jury Summonses returned served, 10 miles travel, subpœnas served also.
20th "	Both parties appeared, cause tried, judgment for plaintiff on verdict for ten pounds, ten shillings and ten pence damages, and —— pounds —— shillings and —— pence costs, to be paid in —— days.
20th March	Defendant paid —— pounds ——, ——, in full of judgment and costs.

No. 3. A. D. 18—.

JAMES JONES *vs.* THOMAS THOMPSON.
Township of Town of

11th Jan.	Received particulars of plaintiff's demand (on contract) for £25, and 6s. 6d. on account of costs from James Patton, plaintiff's Attorney.
12th "	Issued Summons to G. G. Bailiff; costs 6s. 6d., and mileage.
1st Feb.	Summons returned, served the —— day of ——, 9 miles travel.
3rd "	Defendant executed Cognovit for £25.
20th "	Judgment for plaintiff—twenty-five pounds, debt, and —— pounds ——, ——, costs, to be paid in —— days.
10th March	Defendant paid £ debt and costs.

N. B. *The proceedings in a suit may be continued from page to page, giving a reference from one to another; and the sums of money may be in decimal currency, pursuant to* 16 *Vic. cap.* 158, *if so ordered.*

65. CASH BOOK.

Cash Book—Receipts.

Account of Suitors' money paid into the —— Division Court for the —— commencing the 1st of January, 1851.

No.	Style of Cause.	When Received.	From whom Received.	Amount. *£	s.	d.
3[illegible]	Doe *vs.* Roe	24th Jan., 1851.	Defendant	10	0	0
100	Den *vs.* Fen et al.	27th " "	Bailiff	5	10	0
250	James *ats.* Jones	28th Feb., "	Plaintiff	0	18	4
153	Thomas *vs.* Roe et al.	10th April, "	Wm. Roe	20	11	8
	Receipts up to 30th April, ... £			37	0	0
	Paid to Suitors as per payment account, ...			27	0	0
	Balance in Court 30th April, carried to next Quarter, ...			£10		
	To Cash Balance remaining in Court 30th April, ... £			10	0	0
357	Johnston *ats.* Wilson, &c.	3rd Sept., 1851. &c.	From Plaintiff, &c.	2	7	6

Cash Book—Payments.

Account of Suitors' money paid out of the —— Division Court for the —— commencing the 1st of January, 1851.

No.	Style of Cause.	When Paid.	To whom Paid.	Amount. *£	s.	d.
100	Den *vs.* Fen et al.	1st Feb., 1851.	Plaintiff	5	1[illegible]	0
153	Thomas *vs.* Roe et al.	29th April, "	Plaintiff's Attorney	20	11	8
250	James *ats.* Jones	29th " "	Defendant	0	1[illegible]	4
	Payment up to 30th of April, ... £			27	0	0
357	Johnston *ats.* Wilson, &c.	20th Sept., 1851. &c.	Defendant &c	2	7	6

* N. B. *Or the amount may be in decimal currency, pursuant to 16th Vic., ch. 158, if so ordered.*

See Rule No. 4.

66. CLERK'S RETURN OF EMOLUMENTS.

See Rule No. 5.

Return of —— Clerk of the —— Division Court for the —— of all fees and emoluments from the —— day of ——, to the —— day of ——, both days inclusive, made in pursuance of "The Upper Canada Division Courts Act of 1850," section 110.

On What.		No.	Rate.	AMOUNT CURRENCY. £		
Entering every account and issuing summons.	Not Exceeding £2		At 6 l.			
	Exceeding £2		9 d.			
	Exceeding £5		1 s.			
	Exceeding £10		1 s. 3 l.			
	Exceeding £15		1 s. 6 d.			
Copy of Summons, and particulars of demand or set-off, when not furnished by plaintiff or defendant.	Not Exceeding £2		6 l.			
	Exceeding £2		1 s.			
	Exceeding £5		1 s.			
	Exceeding £10		1 s.			
	Exceeding £15		1 s.			
Summons to Witness,			8 d.			
Adjournment of any Cause —	Not Exceeding £2		3 l.			
	Exceeding £2		6 l.			
	Exceeding £5		9 l.			
	Exceeding £10		9 l.			
	Exceeding £15		9 l.			
Entering set-off, or other defence requiring notice to the plaintiff.	Not Exceeding £2		6 l.			
	Exceeding £2		9 d.			
	Exceeding £5		1 s.			
	Exceeding £10		1 s.			
	Exceeding £15		1 s.			
Entering every Judgment —	Not Exceeding £2		6 l.			
	Exceeding £2		9 d			
	Exceeding £5		1 s.			
	Exceeding £10		1 s.			
	Exceeding £15		1 s.			
Every search into a proceeding over a year old			6 l.			
Taking Confession of Judgment—	Not Exceeding £2		6 l.			
	Exceeding £2		6 l.			
	Exceeding £5		6 l.			
	Exceeding £10		9 d.			
	Exceeding £15		1 s.			
Every Warrant of Attachment or Execution.	Not Exceeding £2		6 d.			
	Exceeding £2		1 s.			
	Exceeding £5		1 s. 6 d			
	Exceeding £10		1 s. 6 d			
	Exceeding £15		1 s. 6 d.			
Every copy or certificate of Judgment to another County,			1 s. 3 d			
Drawing Affidavits and administering oaths to Bailiff,			9 l.			

I ——, above-named, make oath and say, that the foregoing Return contains a full and correct statement in every particular, to the best of my knowledge and belief, of the fees and emoluments of my office, received or receivable on business done during the period above-mentioned.

——, Clerk.

Sworn before me at ——, &c.

N. B. *The sums of money may be in decimal currency, pursuant to th 16th Vic., ch. 158, if so ordered.*

67. LIST OF UNCLAIMED MONEYS.

See Rule No. 6.

List of all sums of money belonging to suitors in the —— Division Court for the ——, which remain unclaimed for six years before the last day of December last past—applicable as part of the General Fee Fund of the Division Courts.

Published in pursuance of the 13th section of "The Upper Canada Division Courts Extension Act of 1853."

For whom or on whose account money paid into Court.	When Paid.	Style and No. of Suit.	Amount. *£	s.	d.

Dated

Clerk's Office, January, 18 .

——————, Clerk.

* *Or the amount may be in decimal currency, pursuant to 16th Vic ch 158, if so ordered.*

See Rules Nos. 7 and 12.

68. BAILIFF'S RETURN.

Return of A. B., Bailiff of the ——— Division Court for the ———, made in pursuance of the Rules of Practice, touching all Warrants, precepts, and writs of execution, acted on or in hand, between the —— day of ——, and the —— day of ——.

Number.	Style of Cause.	Nature of Process.	When received.	Amount to be made.	Amount levied.	When levied.	Amount of Bailiff's Charges.	Amount paid to Clerk.	When paid.	Remarks.

A. B. above-named maketh oath and saith, that the foregoing Return is full, true and correct, in every particular.

Sworn before me at ———, in the ———, this —— day of ——, 18 .
E. F., Clerk.

Toronto, 28th June, 1854.

(Signed) S. B. HARRISON,
" M. O'REILLY,
" E. C. CAMPBELL,
" GEO. MALLOCH,
" JAS. ROBT. GOWAN.

Approved as amended 8th July, 1854.

(Signed) JNO. B. ROBINSON, C. J.
" J. B. MACAULAY, C. J. C. P.
" W. H. DRAPER, J.
" ROBERT E. BURNS, J.
" WM. B. RICHARDS, J.

for the
cuting
on or in
——.

narks.

foregoing

VAN.

INDEX TO RULES.

NEW RULES AND FORMS—

1. Substituted for old Rules and forms.
2. Time of coming into operation.

CLERK'S DUTIES—

3. As to place of holding office.
4. As to books.
5. As to Returns of Emoluments.
6. As to unclaimed moneys.
7. As to Bailiff's Returns, pursuant to 12th Rule.
8. As to numbering of suits.
9. As to annexing copy of account, &c., to summons, or copy, and issuing the same.
10. As to indorsing warrants of commitment.

BAILIFF'S DUTIES—

11. As to returning summonses.
12. As to paying over sums levied, and returning writs of execution, &c.
13. As to indorsing warrants of commitment.
14. DESCRIPTION of parties.

PARTICULARS—

15. Of claim.
16. In cases against officers and their sureties.
17. PARTICULARS ON JUDGMENT SUMMONS.

SUMMONS—

18. The issuing of ordinary summons.
19. Additional Notice on, under 90th section of 13 and 14 Vic. ch. 53.
20. Under 9th section of 16 Vic. ch. 177.
21. Mode of service.
22. When to be served.
23. Under 91 sec. of 13 & 14 Vic. ch. 53—Mode of service.

ATTACHMENT—

24. Affidavit for.
25. No hearing nor trial until a month after seizure under, when summons not personally served.
26. INSPECTION OF DOCUMENTS—Mode of.
27. WITHDRAWAL OF CAUSE—By plaintiff.
28. ADJOURNMENT OF SUIT.
29. DEFENCE—Notice of.
30. ADMISSION—Notice of.
31. CONFESSION—Requisites, &c.—Mode of taking and proceeding upon.
32. PAYMENT INTO COURT—Proceedings after, by plaintiff, for remainder.

AMENDMENT—

33. In case of wrong defendant.
34. Where party wrongly sues or is sued as representative instead of in his own right.
35. Where party wrongly sues or is sued in his own right instead of as representative.
36. Of plaintiff's name in summons.
37. Of defendant's name in summons.

AMENDMENTS—*Continued.*
38. Where wife is improperly joined in suit with her husband, or wrongly omitted.
39. Where more persons plaintiffs than by law required.
40. Where fewer persons plaintiffs than by law required.
41. Where more persons defendants than by law required.
42. Where, among several defendants, some not served are struck out.
43. Where variance at hearing between evidence and proceedings.
44. To be made in open court, &c.
45. Irregularity or defect not to prevail against merits.
46. AFFIDAVITS—Requisites for.
47. POSTAGE—Allowance for.
48. WITNESS FEES—How allowed.
ABATEMENT—
49. None, when cause of action remains to survivors of suitors dying before judgment.
50. None, when death of suitor occurs before judgment, but survivors may proceed without leave of Court.
51. JUDGMENT, &c—Mode of entry.
52. NEW TRIAL—Mode of proceeding on application for.
INTERPLEADER—
53. Claims—how prosecuted.
54. Where claim dismissed—Bailiff's costs.
55. COMMITMENT—Warrant of, Requisites for, &c.
EXECUTORS OR ADMINISTRATORS—
56. How Charged with having assets, and wasting them.
57. Judgment against, where assets wasted.
58. Judgment against, where representative character denied, and release to himself alleged, &c., where judgment for plaintiff.
59. Judgment against, where representative character admitted, and demand denied but proved by plaintiff.
60. Judgment against, where representative character admitted, demand denied, and total or partial administration alleged, but plaintiff proves demand, and defendant proves administration.
61. Judgment against, in similar cases to foregoing (60) except that defendant does *not* prove administration alleged.
62. Judgment against, where representative character, and plaintiff's demand admitted, but total or partial administration alleged and proved.
63. Judgment against, in similar cases to the foregoing (62) except that administration *not* proved.
64. Proceedings against, by summons after judgment to levy upon assets, "*quando acciderint.*"
65. Payment into Court, on admission.
66. Judgment against, in other cases, when defence fails
REVIVING JUDGMENTS—
67. When necessary.
68. Mode of.
69. GENERAL RULE—
70. INTERPRETATION.

ongly omitted.

t.

dying before

s may proceed

ase to himself

emand denied

d denied, and
demand, and

fendant does

emand admit-

t administra-

sets, "*quando*

INDEX TO SCHEDULE OF FORMS.

AFFIDAVIT—

1. For leave to sue a party in an adjoining Division.
2. For leave to sue several parties.

PARTICULARS—

3. In case of Contract.
4. In case of Tort.
5. In actions against Clerk or Bailiff, and his sureties.

SUMMONS—

6. To appear.
7. Affidavit of service of.
8. SETT-OFF—notice of.
9. DEFENCE—under statute—notice of.
10. ADMISSION—notice of, to save unnecessary expense in proof.

CONFESSION OF DEBT—

11. After suit commenced.
12. Affidavit of execution of

WITNESS—

13. Summons to.
14. Allowance to.
15. JURORS—summons to.
16. JUDGMENT of Non suit or Dismissal for want of prosecution—Minute in Procedure Book of.
17. JUDGMENT *against* Defendant—for debt or damages—Minute in Procedure Book of.
18. JUDGMENT *for* Defendant—Minute in Procedure Book of.
19. NEW TRIAL—order for.

EXECUTION—

20. Against goods of defendant.
21. Against goods of plaintiff.
22. ATTACHMENT—Affidavit for.

BOND—

23. On seizure or sale of perishable property.
24. On supersedeas to warrant of attachment.

ARBITRATION.

25. Reference—order of.
26. Award.
27. Minute in Procedure Book of Judgment on

INTERPLEADER—

28. Summons to plaintiff.
29. Summons to claimant.
30. Particulars of claim on.
31. Minute in Procedure Book of Adjudication on.
32. Execution against the goods of claimant.

EXECUTOR OR ADMINISTRATOR—

33. Minute in Procedure Book of ordinary Judgment against.
34. Of Judgment against, where assets wasted.
35. Of Judgment against, where representative character denied, or release pleaded.

EXECUTOR OR ADMINISTRATOR—*Continued.*
36. Of Judgment against, where representative character admitted, but demand denied.
37. Of Judgment against, where representative character admitted, but demand denied and total or partial administration alleged—and both demand and administration proved.
38. Similar to foregoing (37) except administration alleged *not* proved.
39. Of judgment against, where representative character and demand admitted, but total or partial administration alleged and proved.
40. Similar to foregoing (39) except administration alleged *not* proved.
41. Summons to, where plaintiff alleges assets to have accrued since judgment.
42. Devastavit—suggestion of, on original summons.
43. Summons on devastavit.
44. Minute in Procedure Book of judgment against, on Devastavit after judgment
45. Summons *on behalf of*, to revive a judgment.
46. Summons to revive judgment *against*.
47. Minute in Procedure Book to revive a judgment *for*.
48. Minute in Procedure Book of Judgment to revive a judgment *against*.
49. Execution against goods of testator.
50. Execution *for*, on judgment revived in his favour.
51. Execution *against*, on judgment revived.
52. TRANSCRIPT OF JUDGMENT.
53. CERTIFICATE OF JUDGMENT FOR REGISTRATION.
54. JUDGMENT SUMMONS—Application for.
55. JUDGMENT SUMMONS TO DEFENDANT.
COMMITMENT—WARRANT OF.
56. In default of appearance.
57. After examination.
58. DISCHARGE FROM CUSTODY—CERTIFICATE OF
FINE—
59. On witness, minute in Procedure Book of imposition of.
60. For Contempt—Minute in Procedure Book, &c.
61. On Juror for non-attendance, Minute in Procedure Book, &c.
62. COMMITMENT FOR CONTEMPT—WARRANT OF.
63. WITNESS—Warrant to levy fine upon.
64. PROCEDURE BOOK—
65. CASH BOOK.
66. CLERK'S RETURN OF EMOLUMENTS.
67. LIST OF UNCLAIMED MONEYS.
68. BAILIFF'S RETURN.